

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARCHIBALD CUNNINGHAM,

No. C 10-03211 CRB

Plaintiff,

**ORDER DENYING TEMPORARY  
RESTRAINING ORDER**

v.

PATRICK J. MAHONEY et al.,

Defendants.

Plaintiff Archibald Cunningham has filed a Motion for Temporary Restraining Order in which he seeks to have the Court enjoin Defendants—his ex-wife, her counsel, and six state court judges—from engaging in a series of actions in connection with his status as a Vexatious Litigant. The crux of Plaintiff’s argument is that California’s Vexatious Litigant statute, California Code of Civil Procedure § 391.7, is unconstitutional.

The Court finds that Plaintiff is unlikely to succeed on the merits. In his earlier suit about the same events and against the same parties<sup>1</sup>, this Court, Judge Jeffery S. White presiding, found that Plaintiff failed to state a claim because his claims were barred by absolute judicial immunity and because this Court lacks jurisdiction to review state court judgments. See case no. 10-1182 JSW, dckt. no. 45 at 3. That finding was summarily affirmed by the Ninth Circuit. Id. at dckt. no. 51. Plaintiff’s argument here that section

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<sup>1</sup> In this suit, Plaintiff has added one additional defendant who was not a party to the first suit: Maria Schopp, counsel for his ex-wife.

1 391.7 is unconstitutional is additionally problematic in light of Wolfe v. George, 486 F.3d  
2 1120 (9th Cir. 2007). In Wolfe, 486 F.3d at 1125-27, the Ninth Circuit found that section  
3 391.7 was not unconstitutionally vague, nor overbroad, and that it violated neither the Due  
4 Process Clause nor the Equal Protection Clause.

5 Accordingly, the Motion is DENIED.

6 **IT IS SO ORDERED.**

7 Dated: September 28, 2010



8 CHARLES R. BREYER  
9 UNITED STATES DISTRICT JUDGE  
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